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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,182	05/22/2002	Takuo Sakai	0397-0441P	7643

2292 7590 12/27/2004

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EXAMINER

WARE, DEBORAH K

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/069,182

Applicant(s)

SAKAI, TAKUO

Examiner

Deborah K. Ware

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see Attachment A.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1 and 3-9.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

ATTACHMENT A

Claims 1 and 3-9 are presented for reconsideration on the merits.

The after final response filed November 22, 2004, has been received and will be entered.

Claim Rejections - 35 USC § 102

The argument of November 22, 2004, is noted, however, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., inhibition of spores from spore-forming bacteria and koji to suppress proliferation of these microbes) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). However, it should be pointed out that the cited reference does teach at column 8, lines 1-5 that a small portion of *Bacillus cereus* may have survived in spore form. This demonstrates inhibition of spores ~~of~~ spore-forming bacteria since the proliferation of these microbes is suppressed by the teaching of only a small amount may have survived in spore form. However, even without this teaching in the cited reference the claim does not require the feature upon which Applicants base their argument(s). The rejection is thus, maintained.

Claim Rejections - 35 USC § 103

The argument filed November 22, 2004, is noted, however, in response to applicant's argument that the references fail to show certain features of applicant's

invention, it is noted that the features upon which applicant relies (i.e. protopectin constitutes middle lamellae and connects plant cells in the plant tissue causing isolation of the cells not their disintegration and substances contained in the middle lamellae or between the plant cells are solubilized together with pectins) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, the argument that Sakai et al does not disclose or suggest an antibacterial substance or the presence of the same between the plant cells is acknowledged. However, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Each and every limitation of the claimed features are disclosed by the cited prior art. Sakai et al clearly disclosed using the enzyme to treat and effectively break down plant tissue.

Furthermore, Applicants' own claimed features are drawn to disintegrating (breaking down) the plant tissue. Therefore, one of skill would have expected successful results by treating a plant tissue with a protopectinase such as C since the reference teaches or at least suggests that the same has been used and works. Hence successful results would have been expected with this enzyme. To select for an enzyme system in place of a solvent system to extract the substance from the plant

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tissue is clearly an obvious modification of the cited prior art and one of skill would have been motivated by the combined teachings of the cited prior art to use an enzyme in place of a solvent. Therefore, the claims remain prima facie obvious over the cited prior art.

37 CFR 1.132 Declaration

Applicants' conclusion that sample (A), i.e. the composition obtained by the method of the present invention, has superior effect on the inhibition of germination of spores from spore forming bacteria is acknowledged. However, for reasons noted above the critical features upon which the declaration may support are not in the claims and hence Applicants' alleged criticality is not well supported by the claimed subject matter.


No claims are allowed.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Deborah K. Ware
December 22, 2004


DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1285/